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INTRODUCTION AND BACKGROUND

1. The Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries - Shipping, at its second session requested the secretariat "to inform the Committee, whenever appropriate, about developments concerning general average taking place within the relevant international organizations and industry, including CMI and IUMI".1/ The Committee had before it a report prepared by the secretariat entitled "The Place of General Average in Marine Insurance Today" (UNCTAD/SDD/LEG/1).2/ The report contained data and statistics concerning the extent and impact of general average including the number of incidents, ships involved, age of ship, flag, causes of general average, loss and contributions by ship and cargo, costs of administering general average, place of adjustment and time taken by the general average process. It also examined difficulties encountered by developing countries which were revealed in responses to a questionnaire from the secretariat and discussed how absorption clauses inserted in hull policies might be able to reduce the large numbers of small general average claims currently made. It appeared from the findings of the report that general average as operated today could be open to abuse by some unscrupulous shipowners. This was confirmed by the findings of the report prepared by the Working Party set up by the International Union of Marine Insurance (IUMI).

2. There was concern, especially on the part of the insurance industry, regarding further expansion of the scope of general average by the revision of the York-Antwerp Rules within the Comité Maritime International (CMI). A communication from IUMI to the President of the CMI stated that "Under no circumstances can IUMI accept expansion from the existing Rules. Indeed, almost every association [member of IUMI] indicated in its reply to the [IUMI] questionnaire that it was in favour at the very least of restricting the existing scope of general average".

3. Previous reports of the UNCTAD secretariat 3/ reported on the work within CMI on the revision of the York-Antwerp Rules 1974, as amended 1990, namely that the CMI International Sub-Committee (ISC), charged with the task of studying the law of general average and the York-Antwerp Rules, met twice and prepared recommendations for the revision of the Rules. The recommendations of the ISC were submitted to the 35th CMI Conference which was held in Sydney from 2-8 October 1994.

4. The Conference adopted a new set of Rules, known as the York-Antwerp Rules 1994, and recommended that they should be applied in the adjustment of general average as soon as practicable after 31 December 1994.

5. During the preparation of the UNCTAD secretariat's report, and indeed during the preparatory work within the ISC of the CMI, close cooperation was maintained between the UNCTAD secretariat, CMI, IUMI and the International Association of European General Average Adjusters (AIDE), for which the secretariat wishes to express its appreciation. Reports produced by the UNCTAD secretariat and IUMI on the subject focused on unsatisfactory aspects of general average and highlighted the shortcomings of the system. These reports were circulated to the CMI Conference delegations and contributed towards creating a certain climate, within the Committee carrying out

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1/ Paragraph 14 of the recommendations adopted by the Standing Committee on Developing Services Sectors - Shipping (TD/B/CN.4/39, annex I).

2/ This was the second report on the subject prepared by the UNCTAD secretariat. (See General Average - a preliminary review - TD/B/C.4/ISL/58).

3/ "General Average - A preliminary review", op. cit., paras 7-11: "The Place of General Average in Marine Insurance Today", op. cit., para 9.

substantive work on the issue, of opposition to expanding the scope of general average. To what extent this was achieved will be seen from the following examination of the individual Rules.

6. This report provides a brief account of the main changes introduced into the York-Antwerp Rules 1994. It also gives an account of developments on the subject within IUMI and the London insurance market.

Part one

YORK-ANTWERP RULES 1994

7. It is not intended to provide a comprehensive analysis of the York-Antwerp Rules 1994, but merely to give a brief account of the changes introduced by the new Rules.

Rule of interpretation

8. The Rule of Interpretation, which was introduced in 1950, contains a second paragraph which determines the order of priority between the numbered and lettered Rules. It provides that the numbered Rules override the lettered Rules to the extent that there is conflict between them. Thus a claim may be made in general average under the numbered Rules even though there has been no general average act within the meaning of Rule A.4/ In other words, under some of the numbered Rules, it is possible for a general average claim to be made without the adventure having been in peril, or the expenditure being extraordinary (i.e., true sacrifice), or reasonably incurred.

9. The 1994 Rules provide a partial remedy to this situation by including a new Rule Paramount to impose a requirement of "reasonableness" in respect of all general average sacrifice or expenditure. The second paragraph of the Rule of Interpretation, therefore, refers to the new Rule Paramount and simply states:

> "Except as provided by the Rule Paramount and the numbered Rules, general average shall be adjusted according to the lettered Rules."

10. The intention that the Rule Paramount apply to both numbered and lettered Rules is implied by the title. Thus, their order of precedence would be Rule Paramount, numbered and then lettered Rules.

Rule Paramount

11. A Rule Paramount has been inserted in the York-Antwerp Rules 1994 stating: "In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred." This was introduced in order to overcome the effect of the second paragraph of the Rule of Interpretation and to avoid cases where unreasonable sacrifice or expenditure is allowed in general average under the numbered Rules, as in the case of The "Alpha".5/

12. This is an important addition to the Rules, as it should have a significant impact on the allowances made for sacrifice and expenditure in general average. Thus, a person claiming an allowance in general average under the York-Antwerp Rules 1994 will need to show that the loss or expense was reasonably made or incurred, regardless of whether reasonableness is specifically mentioned in the rules affecting it.

13. Certain Rules, such as Rule F (substituted expenses) and Rule XIV (temporary repairs), which may be open to abuse, will now be subject to the test of "reasonableness", both as regards the course of action taken and that for which it is supposedly substituted.

4/ See Lowndes & Rudolf, The Law of General Average & York-Antwerp Rules (London, Sweet & Maxwell) 1990, 11th edition, paras A.02 to A.07.

5/ 1991, 2 Lloyd's Rep 515.

Rule A

14. The text of Rule A, which sets out the definition of a general average act, remains unchanged. The 1974 Rule B, with a minor drafting change of "expenditure" instead of "expenses", is now placed as a second paragraph under Rule A in order to place provisions dealing with tug and tow in Rule B.

Rule B

15. Rule B is a completely new Rule containing provisions relating to tug and tow. This was considered necessary in order to achieve uniformity and to avert conflicting court decisions in various countries. The Rule, based on the Rhine Rules, provides a definition of a common maritime adventure where one or more vessels are towing or pushing another vessel or vessels.

16. Reservations were expressed concerning the inclusion of such a Rule in the York-Antwerp Rules on the grounds that it would expand the scope of general average. For the Rule to operate, however, it is necessary for the 1994 Rules to be incorporated into towage contracts and relevant contracts of carriage.

17. It may, however, be questioned whether Rule B was the right place for tug and tow provisions, as the lettered Rules basically deal with general principles of general average and the numbered Rules with specific cases. Being inserted immediately after Rule A, in which a general average act is defined, it may introduce unintended ambiguity in the Rules. Its wording appears to define "a common maritime adventure" as involving a tug and tow in all cases.

Rule C

18. An important change in relation to Rule C is the inclusion of a new second paragraph excluding from allowance in general average all "losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure". This was balanced by a change to Rule XI, in which paragraph (d) now allows in general average the cost of certain measures undertaken to prevent or minimize damage to the environment.

19. The question of whether or not pollution and environmental damage/liabilities should be excluded from general average was the subject of extensive discussions, both at the Sydney Conference and during the preparatory work within the International Sub-Committee (ISC) of the CMI.

20. The 1974 Rules did not contain specific provisions on the subject. Thus the general principles contained in the Rules, namely Rules A and C, would probably apply. In other words, those losses, damages and expenses would be allowed in general average if they were the direct consequence of a general average act - that is, if they were reasonably made or incurred for the common safety and for the purpose of preserving from peril the property involved in a common maritime adventure.

21. The prevailing view at the Sydney Conference was to exclude all pollution and environmental liabilities from general average. As shipowners' liabilities in respect of pollution and damage to the environment have been traditionally covered by Protection and Indemnity (P & I) Clubs, there was strong opposition from marine property insurers against inclusion of any such liabilities in general average. The P & I insurers, on the other hand, objected to exclusion of any such damages and liabilities if they were the consequence of a general average act.

22. The text in Rules C and XI(b) was therefore adopted as a compromise solution, so as on the one hand to exclude from general average all losses and liabilities in respect of pollution and environmental damage and, on the

other, to include the cost of certain measures to prevent or minimize damage to the environment.

23. In excluding pollution and environmental damage, the second paragraph of Rule C does not specifically include the term "liabilities". The words "losses, damages and expenses" (also included in the first paragraph of Rule C) are used, as they were considered to encompass liabilities. The delegation of the United States of America, however, concerned about the lack of reference to "liabilities" in the second paragraph of Rule C, issued a statement at the closing plenary to the effect that in their view the 1994 Rules excluded allowances in general average for liability in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.

24. Rules II, V and VIII were amended to clarify that only loss of or damage to the property involved in the common maritime adventure was allowed in general average. This was necessary in order to avoid any pollution and environmental liabilities being allowed through the use of general terms in the numbered Rules, as they override the lettered Rules.

Rule E

25. Two new paragraphs have been added to Rule E, requiring claimants in general average to give notice of their claims to the average adjuster within 12 months of the termination of the common maritime adventure. Failure to give such notification, or if despite a request from the average adjuster no details or documents have been provided in support of a notified claim or of contributory values within 12 months of the request, the average adjuster is entitled to estimate the extent of the allowance or contributory values on the basis of the information available to him. The estimate of the average adjuster may only be challenged if it is "manifestly incorrect". This provision was considered necessary in order to accelerate the general average process.

Rule F

26. In Rule F, which deals with substituted expenses, the word "extra" in the first line has been changed to "additional", so that it reads: "Any additional expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average ...".

27. As evident from the text, the expenses allowed under this Rule as substituted expenses are not in themselves of a general average nature. Great care, therefore, is required in allowing the type of expenses under the Rule. The word "extra" used in the 1974 Rules is described in Lowndes & Rudolf 6/ as "a derivative and shortened form of the word 'extraordinary'". It is therefore suggested that "the proposed extraordinary course of action and its concomitant expenses must be truly out of the ordinary, and not just an alternative but standard or normal and routine way of accomplishing the task in hand".7/

28. The arguments put forward, within the ISC at Sydney and the ISC of the AIDE, in support of replacing the word "extra" with the word "additional" were to express more clearly what had always allegedly been intended, and to bring the text into line with the French version of the Rules, which uses the word "supplémentaire".

6/ The Law of General Average and the York-Antwerp Rules, op. cit., para F.21.

7/ Ibid.

29. However, whether the word "extra" was originally intended to mean "extraordinary" or "additional", the most appropriate amendment would have been to make it absolutely clear that only expenses of an extraordinary nature should be allowed under the Rule.

30. The consequence of the change has been described by one of the editors of the current (eleventh) edition of Lowndes and Rudolf 8/ as allowing an "expenditure often incurred by the shipowner for his own benefit and involving him in no sacrifice whatever [to] continue to be treated as supposedly additional and charged to general average (and partly to cargo)."

31. The change is most regrettable. The use of the term "additional" could open the door to abuse and allow in general average expenses which do not represent a real sacrifice, and are merely incurred in the fulfilment of shipowner's contract carriage. It is, therefore, essential that Rule F be construed in such a way as to allow only expenses which are truly of extraordinary nature.

32. Although Rule F is now subject to the requirement of "reasonableness" under the Rule Paramount, the change still results in expansion of the extent of substituted expenses allowed in general average.

Rule G

33. Two new paragraphs are included in Rule G in order to incorporate into the Rules the text of what is called a "non-separation agreement". The 1974 Rules did not contain such wording, so that if following a general average accident the cargo was forwarded to its destination in another vessel, it was the practice for a standard form of Non-Separation Agreement to be incorporated in the Average Bonds and General Average Guarantees required to be signed by cargo interests and their underwriters before delivery was granted at destination. By doing so the cargo interests would agree to contribute to general average expenses incurred (such as crew wages, port charges, bunkers, etc.) after the cargo had left the ship. In other words the parties' rights and liabilities would remain the same as they would have been in the absence of forwarding, as if the adventure had been justifiably continued in the original ship. The cargo interests could also refuse to sign a non-separation agreement and take delivery of the cargo at the port of refuge, upon payment of all charges due and providing security in respect of contribution to general average losses incurred up to the time of taking delivery.

34. Under the 1994 Rules, the cargo will be forwarded to the destination automatically without individual cargo interests being required to sign a non-separation agreement. The inclusion of the phrase "subject to cargo interests being notified if practicable" provides a limited safeguard to cargo interests in some cases. Giving such notification will probably often be considered impracticable for various reasons, such as multi-bill-of-lading cases involving a large number of cargo interests. Some protection is provided to cargo interests by incorporating the wording of the so-called "Bigham Clause", so as to ensure that cargo's contribution in such cases will not exceed the cost which would have been incurred by the owners of cargo if it had been forwarded at their expense.

35. The incorporation of a non-separation provision into the Rules, however, will probably result in expansion of the scope of general average. This was one of the criticisms made against its inclusion into the Rules. Arguments in favour of its inclusion were standardization of wording and avoidance of time and expense involved in obtaining a non-separation agreement from individual cargo interests.

8/ D J Wilson, in his personal observations to the same proposal within the ISC of the AIDE, XVIIth AIDE General Assembly, Prague, September 1993.

Rule II - Loss or damage by sacrifices for the common safety

36. Two amendments are made to the first part of Rule II: (i) the wording "to the property involved in the common maritime adventure" replaces "to a ship and cargo" and is used here and in Rules V and VIII to make clear that only loss or damage to the **property** involved in the common maritime adventure is allowed and not pollution and environmental liabilities to third parties. It also has the effect of allowing loss, e.g., of freight, to be made good in such cases; (ii) the words "loss of" are added to the beginning of the Rule so as to include both loss of or damage by or in consequence of a sacrifice. Under the 1974 Rules, loss of cargo by sacrifice for common safety would only be covered under the lettered Rules and not under Rule II. The change does not amount to expansion of the scope of general average, since such loss or damages was already covered under Rule A.

Rule III - Extinguishing fire on shipboard

37. Rule III has been amended in respect of exclusion of heat damage. While the 1974 Rules excluded from general average any allowance for damage by heat however caused, under the 1994 Rules only damage caused by the "heat of the fire" is excluded. Thus, any other heat damage caused by extinguishing measures will be allowed in general average under the 1994 Rules.

Rule V - Voluntary stranding

38. As with Rules II and VIII, and to ensure that no pollution or environmental liabilies (caused by a voluntary stranding) are allowed as general average, Rule V is amended so as to clarify that only "loss or damage to the property involved in the common maritime adventure" in consequence of a voluntary stranding is allowed in general average. This is to ensure that no pollution or environmental liabilities are allowed as they would have been with the wording of the 1974 Rule. The general exclusion of environmental liabilities in the second paragraph of Rule C would not be sufficient to prevent such liabilities being allowed under the numbered Rules because of the Rule of Interpretation (see also Rules C, II and VIII).

Rule VIII - Expenses lightening a ship when ashore, and consequent damage

39. A similar change to that in Rules II and V is also made in respect of Rule VIII to avoid the possibility of allowances for environmental liabilities in general average.9/ Furthermore, the term "loss or damage **sustained thereby**" has been replaced by "any loss or damage ... **in consequence thereof**". While the words "**sustained thereby**" are considered to include such loss or damage as might have been reasonably expected or foreseen as a result of the forced discharge, lighterage, storing and reshipping,10/ the term "**in consequence thereof**" will possibly result in a wider range of consequential loss or damage being allowed in general average.

Rule IX - Cargo, ship's materials and stores used for fuel

40. Amendments to Rule IX include:

(a) Cargo used for fuel for the common safety is now specifically allowed in general average under this Rule. Under the 1974 Rules such a claim could be made under Rule A.

9/ See Comment on Rule V, para 38.

10/ See Lowndes & Rudolf, op. cit., para 8.29.

(b) The words "when and only when an ample supply of fuel had been provided", in the 1974 Rules, have been deleted. Under the 1994 Rules, therefore, the shipowner will be entitled to claim in general average for ship's materials and stores burnt for fuel even if insufficient supply of fuel had been provided, and even though the ship was unseaworthy as far as the provision of fuel was concerned. The change will result in an expansion of the scope of general average, even if cargo interests may, under Rule D, be able to refuse contribution or claim recovery of their contribution afterwards on the grounds of unseaworthiness of the vessel.

(c) The 1994 Rule specifically provides that only when ship's materials and stores are used for fuel, can the general average be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage. The Rule, however, does not specify which party should be debited.

41. The changes introduced into Rule IX will in practice work against cargo interests: Firstly, there was no need to provide for cargo losses in Rule IX, as cargo interests had the right to have their loss made good under Rule A. Secondly, no credit will now be given for the fuel that would normally have been used and as a result cargo interests will effectively be paying a share of their own loss. Thirdly, there is now no requirement that an ample supply of fuel should be provided at the outset, so no evidence will now be provided in the adjustment of the quantities of fuel on board and cargo interests will have to do their own detective work before disputing any claim. Thus, the new Rule will mean that the general average system will be called in to operate in many cases where the shipowner should bear the whole loss.

15. Rule X(c) - Expenses at port of refuge, etc

42. A new sentence has been added to the first paragraph of Rule X(c), making the provisions of Rule XI applicable to the extra period of detention caused by reloading or restowing envisaged under the Rule. In other words, under the 1994 Rules, wages and maintenance of the crew, etc, are specifically allowed in general average during the period of such detention.

43. It appears, however, that although the 1974 Rule X(c) did not specifically mention wages and maintenance, etc, in practice, average adjusters already allow such expenses. Although the amendment is said to be a clarification of present practice,11/ it still appears to result in the expansion of the scope of general average as laid down in the Rules.

Rule XI - Wages and maintenance of crew and other expenses bearing up for and in a port of refuge, etc

Rule XI(b)

44. The sequence of the existing sub-paragraphs of this Rule has been reordered.

45. The fourth paragraph of the 1994 Rules now mentions "port charges" in the list of excluded expenses incurred during extra detention for repairs of damage sustained prior to the voyage. A similar change is also made in the fifth paragraph to provide a time limit on the period during which port charges are allowed in general average when the ship is condemned or the voyage is abandoned.

11/ See the report of the Chairman of the ISC of the CMI, CMI Yearbook, 1993, Sydney 1, p 150. See also York-Antwerp Rules, 1994, An Analysis, by C S Hebditch and J A Macdonald, Richards Hogg Ltd, London, 1994, p 25.

Rule XI(d)

46. The 1974 Rule XI(d), which allowed crew overtime for non-general average work as a substituted expense up to the saving thereby achieved, has been deleted. Thus, although crew overtime may still be allowed under Rule F, there will be no provision setting a limit on such overtime. Even if a test of reasonableness is imposed on such expenses under the Rule Paramount, the change is still considered as potentially expansionary, especially by the insurers, resulting in greater amounts being allowed in general average.

47. In place of the deleted Rule XI(d) a new Rule has been inserted allowing in general average the cost of measures undertaken to prevent or minimize damage to the environment in certain cases. The Rule was part of the compromise reached on the question of pollution damage and environmental liabilities. The costs of such measurea are therefore allowed in general average when they are incurred: (i) as part of an operation for the common safety which, if it had been performed by a third party, would have entitled him to a salvage reward; (ii) as a condition of entry into a port of refuge; (iii) as a condition of remaining in a port of refuge. When there is an actual escape or release of any pollutant substances, the cost of any additional measures required is not allowed in general average; (iv) necessarily in connection with discharging, storing and reloading of cargo, when the costs of such measures are admitted in general average.

Rule XII - Damage to cargo in discharging, etc

48. An important amendment has been made to Rule XII which deals with the admissibility in general average of loss or damage to cargo in discharging, reloading, etc. The term "caused in the act of handling, ..." used in the 1974 Rules, is now replaced by the words "sustained in consequence of handling ..." The 1994 Rule therefore reads:

> "Damage to or loss of cargo, fuel or stores sustained in consequence of their handling, discharging ... shall be made good in general average ...".

49. The words "caused in the act of" used in the 1974 Rules were clear in their coverage and restricted the loss or damage allowed in general average to those sustained during the actual operation of handling, loading, etc. By contrast, the 1994 wording "sustained in consequence of" is vague and much wider in its scope. It will probably make all types of consequential loss or damage allowable in general average, and its interpretation is likely to result in conflicting opinions and numerous disputes.

50. Attempts had been made during the revision of the 1950 Rules to introduce this wording into the Rule, on the grounds that the existing wording of the Rule was **too restrictive** in that it covered loss or damage to cargo caused only in the act of handling, etc.12/ The original wording, however, was retained as no agreement could be reached at that time on an appropriate wording.

51. Proponents of the change argue that the 1974 wording was **too wide** and might allow in general average damage to cargo from quite extraneous causes, such as negligence of stevedores.13/ The new wording, however, does not seem to have solved the problem, but has rather added a complication. The change is clearly an expansion of the scope of general average.

12/ See Lowndes & Rudolf, op. cit., para 1207.

13/ York-Antwerp Rules, 1994, An Analysis by C S Hebditch and J A Macdonald, op. cit., p 30.

Rule XVII - Contributory values

52. A new sentence has been added to the second paragraph of Rule XVII to ensure that in determining the contributory value of the ship no deduction is made of charges falling upon the ship in respect of an award for special compensation under article 14 of the International Convention on Salvage, 1989, or under any other similar provisions.

53. The point had been overlooked at the CMI Paris Conference, when Rule VI was amended to take account of the 1989 Salvage Convention. Without this amendment any special compensation falling upon the ship could be regarded as an extra charge incurred subsequent to the general average act, and therefore would have been deducted from the value of the ship. This would contradict the object of Rule VI(b).

54. A new third paragraph has been added to Rule XVII to deal with the calculation of the contributory values of cargo and ship in the circumstances envisaged in the third paragraph of Rule G, which introduced into the Rules the text of a non-separation agreement.

55. The last paragraph of Rule XVII has been amended to include mails and accompanied private motor vehicles within the list of interests exempted from contribution in general average, irrespective of whether or not they are shipped under a bill of lading. The 1974 Rules excluded only passengers' luggage and personal effects provided they were not shipped under bills of lading. The change is probably sensible but in the case of car ferries it will sometimes mean an extra burden on the commercial lorries and cargo carried.

Rule XX - Provision of funds

56. Rule XX has been redrafted so as to avoid the use of out-dated wording such as "bottomry".

57. A proposal to allow two per cent commission on wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage was rejected as having the effect of expanding general average.

Rule XXI - Interest on losses made good in general average

58. Rule XXI has been amended to extend the period during which interest is allowed on expenditure, sacrifices and all allowances in general average, at the rate of seven per cent per annum, until three months after the issue of the general average adjustment. Under the 1974 Rules, interest was only allowed up to the date of the general average statement.

59. The change will not only result in expansion of the amounts allowed in general average; it is also likely to create uncertainty and confusion when general average contributions are paid earlier than three months after the date of the adjustment. For example, if a cargo interest pays his contribution one month after the issue of the general average adjustment, what will become of the two months' interest he has already paid? Can he claim it back, or is the average adjuster obliged to offer to return the excess, or is the creditor (the shipowner in most cases) to benefit from the windfall of two months' interest at seven per cent? In cases of insured interests, however, the underwriters are most likely to delay payment for at least three months after the date of the general average adjustment.

CONCLUDING REMARKS

60. As may be seen from this brief analysis of the changes introduced into the York-Antwerp Rules 1994, a number of important alterations have been made to the Rules. Some of the changes introduced aim at clarification of the issues and are undoubtedly an improvement to the existing system.

61. The revision of the 1974 Rules was a good opportunity to restrict the scope of general average. Unfortunately some of the changes introduced into the 1994 Rules will still result in the expansion of the scope of general average. In completing the work on the revising the York-Antwerp Rules, the CMI did not give detailed consideration to the general average system and its continued validity in modern trading conditions. Indeed, it did not set out to do so. However, it appears that the insurance industry is pursuing the subject with a view to bringing about an appropriate reform of the system.14/

14/ See Part II, paras 62-70.

Part two

DEVELOPMENTS WITHIN THE INTERNATIONAL UNION OF MARINE INSURANCE (IUMI) AND THE LONDON MARKET

A. Activities of the IUMI

62. The General Average Working Party set up by IUMI carried out a thorough investigation into many aspects of general average. It produced a report entitled "General Average and its Impact on Marine Insurance", containing a large amount of statistical data from a wide cross-section of cases and markets. It compiled data on over a thousand general average incidents during recent years, looking in greater depth at about a quarter of them. Because of the large number of cases analysed, it was believed that the findings were statistically valid and largely representative of general average as a whole.

63. The study highlights a number of unsatisfactory aspects of general average. It concentrates on issues such as number, size and costs of general average incidents, the causes of general average by number and value of claims, type of ships involved, age of ships at time of general average, allocation of costs between hull and cargo, costs of administering general average, time taken to prepare general average and absorption clauses and their impact in reducing the number of incidents currently treated as general average.

64. The IUMI report, indeed, complemented that of the UNCTAD secretariat. It covered similar topics and its findings confirmed those of the UNCTAD secretariat's report. The IUMI report was circulated to delegations attending the CMI Sydney Conference and to IUMI member associations. It was also submitted to the IUMI annual Conference, held in Toronto in September 1994. The subject was debated at a workshop during the Conference. A communication from IUMI to the President of the CMI then followed which stated:

> "Based on the research undertaken and the attitudes shown, IUMI views many of the proposals made by [the CMI] ISC or selected National Maritime Associations with concern because they imply a continued expansion of general average. Under no circumstances can IUMI accept expansion from the existing Rules. Indeed, almost every association [member of IUMI] indicated in its reply to the [IUMI] questionnaire that it was in favour at the very least of restricting the existing scope of general average ... It is thought by IUMI members that a restriction in the present scope of general average would encourage prompter settlement of many adjustments which today are frequently challenged."

65. The IUMI representatives at the CMI Sydney Conference, therefore, took a strong line against any proposal which would result in the expansion of the scope of general average. IUMI is presently examining the impact of the York-Antwerp Rules 1994 and the shortcomings of the general average system, with a view to finding a commercial solution to the problems involved. It has, therefore, placed general average on the agenda for its next annual Conference, which is to be held in Tokyo in September 1995.

B. Activities of the London insurance market

66. The London market played an active part in the work carried out within IUMI, including the preparation of the IUMI study. Many unsatisfactory aspects of the general average system were identified by the IUMI study. To have addressed these would have required far more fundamental reforms than the revisions carried out at the CMI Conference. The London market has, therefore, decided to continue research and analysis into general average and sees this as independent of the outcome of the CMI Conference.

67. The purpose of its work will be to: (a) examine the potential for reform of various aspects of general average which appear unsatisfactory; (b) estimate the costs of the different constituent elements in the system; and (c) develop workable proposals for change. Some reforms, such as increased use of absorption clauses in hull policies, will be possible to implement through action by the insurance industry alone; others would require more general agreement within the maritime community.

68. Insurers in the London market are generally pleased that comparatively few of the proposals for expansion of the scope of general average were adopted by the CMI Conference. They are, however, concerned about those which have found their way into the new Rules, and will keep them under close scrutiny in the months to come.

69. One of the issues of great concern to insurers in London, and indeed throughout the world, was the so-called "pollution compromise", Rules C and XI(d). Cargo insurers in the London market seem generally disposed to accept the principle of paying cargo's share of expenses for measures to prevent or minimize environmental damage. Hull insurers nevertheless remain unhappy at the prospect of paying hull's share of such expenses, which they regard for many reasons as unsuitable for cover under a marine hull policy and more properly the preserve of the P & I Clubs. Indeed, the draft versions recently produced for new hull clauses specifically exclude these amounts, and while the final versions have not yet been agreed it will not be surprising if this exclusion remains.

70. In conclusion, while the London market is generally relieved that the outcome of the CMI Conference was rather better than feared, it believes that there are fundamental problems in the current operation of the general average system, and intends to prepare the ground to allow as many of these problems as possible to be removed.

CONCLUDING REMARKS

71. The first report of the UNCTAD secretariat 15/ suggested that investigations might be carried out by insurance interests into the possibility of establishing whether any insurance arrangements could be found to overcome problems involved in the operation of the general average system. Recommendations to that effect were then adopted by the Working Group on International Shipping Legislation (WGISL);16/ following which the secretariat had regular consultations with members of the insurance industry, including the IUMI. Close cooperation had been maintained with CMI and the insurance industry during the preparatory work leading up to the adoption of the York-Antwerp Rules 1994.

72. It is particularly encouraging to note that IUMI, the London market and the insurance industry as a whole, are keenly interested in the subject, and are continuing their investigations into the aspects of general average which they consider unsatisfactory. It is hoped that the efforts of the insurance interests will be successful in bringing about an appropriate reform of the system and thus facilitating international trade and economic efficiency.

15/ General Average - A preliminary review (TD/B/C.4/ISL/58).

16/ See Report of the Working Group on International Shipping Legislation on its thirteenth session (TD/B/C.4/ISL/59), Decision 7(XIII), annex I.

ANNEX

A comparative text of the York-Antwerp Rules 1994, and 1974 as amended 1990

York-Antwerp Rules, 1994	York-Antwerp Rules, 1974 as amended 1990
RULE OF INTERPRETATION	**RULE OF INTERPRETATION**
In the adjustment of general average the following Rules shall apply to the exclusion of any Law and Practice inconsistent therewith.	In the adjustment of general average the following *lettered and numbered* Rules shall apply to the exclusion of any Law and practice inconsistent therewith.
Except as provided by *the Rule Paramount and* the numbered Rules, general average shall be adjusted according to the lettered Rules.	Except as provided by the numbered Rules, general average shall be adjusted according to the lettered Rules.
RULE PARAMOUNT	
In no case shall there be any allowance for sacrifice or expenditure unless reasonably made or incurred.	
RULE A	**RULE A**
There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.	There is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.
General average sacrifices and expenditures shall be borne by the different contributing interests on the basis hereinafter provided.	
RULE B	**RULE B**
There is a common maritime adventure when one or more vessels are towing or pushing another vessel or vessels, provided that they are all involved in commercial activities and not in a salvage operation.	*General average sacrifices and expenses shall be borne by the different contributing interests on the basis hereinafter provided.*
When measures are taken to preserve the vessels and their cargoes, if any, from a common peril, these Rules shall apply.	

York-Antwerp Rules, 1994	York-Antwerp Rules, 1974 as amended 1990
A vessel is not in common peril with another vessel or vessels if by simply disconnecting from the other vessel or vessels she is in safety; but if the disconnection is itself a general average act the common maritime adventure continues.	
RULE C	**RULE C**
Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.	Only such losses, damages or expenses which are the direct consequence of the general average act shall be allowed as general average.
In no case shall there be any allowance in general average for losses, damages or expenses incurred in respect of damage to the environment or in consequence of the escape or release of pollutant substances from the property involved in the common maritime adventure.	
Demurrage, loss of market, and any loss or damage sustained or expense incurred by reason of delay, whether on the voyage or subsequently, and any indirect loss whatsoever, shall not be admitted as general average.	*Loss or damage sustained by the ship or cargo through* delay, whether on the voyage or subsequently, *such as demurrage,* and any indirect loss whatsoever, *such as loss of market,* shall not be admitted as general average.
RULE D	**RULE D**
Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.	Rights to contribution in general average shall not be affected, though the event which gave rise to the sacrifice or expenditure may have been due to the fault of one of the parties to the adventure; but this shall not prejudice any remedies or defences which may be open against or to that party in respect of such fault.
RULE E	**RULE E**
The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.	The onus of proof is upon the party claiming in general average to show that the loss or expense claimed is properly allowable as general average.
All parties claiming in general average shall give notice in writing to the average adjuster of the loss or expense in respect of which they claim contribution within 12 months of the date of the termination of the common maritime adventure.	

York-Antwerp Rules, 1994

Failing such notification, or if within 12 months of a request for the same any of the parties shall fail to supply evidence in support of a notified claim, or particulars of value in respect of a contributory interest, the average adjuster shall be at liberty to estimate the extent of the allowance or the contributory value on the basis of the information available to him, which estimate may be challenged only on the ground that it is manifestly incorrect.

RULE F

Any *additional* expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

RULE G

General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

When a ship is at any port or place in circumstances which would give rise to an allowance in general average under the provisions of Rules X and XI, and the cargo or part thereof is forwarded to destination by other means, rights and liabilities in general average shall, subject to cargo interests being notified if practicable, remain as nearly as possible the same as they would have been in the absence of such forwarding, as if the adventure had continued in the original ship for so long as justifiable under the contract of affreightment and the applicable law.

The proportion attaching to cargo of the allowances made in general average by reason of applying the third paragraph of this Rule shall not exceed the cost which would have been borne by the owners of cargo if the cargo had been forwarded at their expense.

York-Antwerp Rules, 1974 as amended 1990

RULE F

Any *extra* expense incurred in place of another expense which would have been allowable as general average shall be deemed to be general average and so allowed without regard to the saving, if any, to other interests, but only up to the amount of the general average expense avoided.

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General average shall be adjusted as regards both loss and contribution upon the basis of values at the time and place when and where the adventure ends.

This rule shall not affect the determination of the place at which the average statement is to be made up.

York-Antwerp Rules, 1994

RULE I. JETTISON OF CARGO

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognized custom of the trade.

RULE II. ***LOSS OR DAMAGE BY SACRIFICES*** **FOR THE COMMON SAFETY**

Loss of or damage to the property involved in the common maritime adventure by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

RULE III. EXTINGUISHING FIRE ON SHIPBOARD

Damage done to a ship and cargo, or either of them, by water or otherwise, including damage by beaching of scuttling a burning ship, in extinguishing a fire on board the ship, shall be made good as general average; except that no compensation shall be made for damage by smoke however caused *or by heat of the fire.*

RULE IV. CUTTING AWAY WRECK

Loss or damage sustained by cutting away wreck or parts of the ship which have been previously carried away or are effectively lost by accident shall not be made good as general average.

RULE V. VOLUNTARY STRANDING

When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage *to the property involved in the common maritime adventure* shall be allowed in general average.

York-Antwerp Rules, 1974 as amended 1990

RULE I. JETTISON OF CARGO

No jettison of cargo shall be made good as general average, unless such cargo is carried in accordance with the recognized custom of the trade.

RULE II. DAMAGE BY ***JETTISON AND SACRIFICE*** **FOR THE COMMON SAFETY**

Damage done to a ship and cargo, or either of them, by or in consequence of a sacrifice made for the common safety, and by water which goes down a ship's hatches opened or other opening made for the purpose of making a jettison for the common safety, shall be made good as general average.

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When a ship is intentionally run on shore for the common safety, whether or not she might have been driven on shore, the consequent loss or damage shall be allowed in general average.

York-Antwerp Rules, 1994

RULE VI. SALVAGE REMUNERATION

(a) Expenditure incurred by the parties to the adventure in the nature of salvage, whether under contract or otherwise, shall be allowed in generral average provided that the salvage operations were carried out for the purpose of preserving from peril the property involved in the common maritime adventure.

Expenditure allowed in general average shall include any salvage remuneration in which the skill and efforts of the salvors in preventing or minimizing damage to the environment such as is referred to in Article 13 paragraph 1(b) of the International Convention on Salvage, 1989 have been taken into account.

(b) Special compensation payable to a salvor by the shipowner under Article 14 of the said Convention to the extent specified in paragraph 4 of that Article or under any provision similar in substance shall not be allowed in general average.

RULE VII. DAMAGE TO MACHINERY AND BOILERS

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be made good as general average.

York-Antwerp Rules, 1974 as amended 1990

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RULE VII. DAMAGE TO MACHINERY AND BOILERS

Damage caused to any machinery and boilers of a ship which is ashore and in a position of peril, in endeavouring to refloat, shall be allowed in general average when shown to have arisen from an actual intention to float the ship for the common safety at the risk of such damage; but where a ship is afloat no loss or damage caused by working the propelling machinery and boilers shall in any circumstances be made good as general average.

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RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE, AND CONSEQUENT DAMAGE

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and *any* loss or damage *to the property involved in the common maritime adventure in consequence thereof,* shall be admitted as general average.

RULE IX. *CARGO,* SHIP'S MATERIALS AND STORES *USED* FOR FUEL

Cargo, ship's materials and store, or any of them, necessarily *used* for fuel for the common safety at a time of peril shall be admitted as general average, *but when such an allowance is made for the cost of ship's materials and stores the general average shall be credited with the estimated cost of the fuel which would otherwise have been consumed in prosecuting the intended voyage.*

RULE X. EXPENSES AT PORT OF REFUGE, ETC

(a) When a ship shall have entered a port or place of refuge or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a

York-Antwerp Rules, 1974 as amended 1990

RULE VIII. EXPENSES LIGHTENING A SHIP WHEN ASHORE, AND CONSEQUENT DAMAGE

When a ship is ashore and cargo and ship's fuel and stores or any of them are discharged as a general average act, the extra cost of lightening, lighter hire and reshipping (if incurred), and *the* loss or damage *sustained thereby,* shall be admitted as general average.

RULE IX. SHIP'S MATERIALS AND STORES *BURNT* FOR FUEL

Ship's materials and stores, or any of them, necessarily *burnt* for fuel for the common safety at a time of peril, shall be admitted as general average, *when and only when an ample supply of fuel had been provided; but the estimated quantity of fuel that would have been consumed, calculated at the price current at the ship's last port of departure at the date of her leaving, shall be credited to the general average.*

RULE X. EXPENSES AT PORT OF REFUGE, ETC

(a) When a ship shall have entered a port or place of refuge, or shall have returned to her port or place of loading in consequence of accident, sacrifice or other extraordinary circumstances, which render that necessary for the common safety, the expenses of entering such port or place shall be admitted as general average; and when she shall have sailed thence with her original cargo, or a part of it, the corresponding expenses of leaving such port or place consequent upon such entry or return shall likewise be admitted as general average.

When a ship is at any port or place of refuge and is necessarily removed to another port or place because repairs cannot be carried out in the first port or place, the provisions of this Rule shall be applied to the second port or place as if it were a

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port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge shall be admitted as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average. *The provisions of Rule XI shall be applied to the extra period of detention occasioned by such reloading or restowing.*

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

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port or place of refuge and the cost of such removal including temporary repairs and towage shall be admitted as general average. The provisions of Rule XI shall be applied to the prolongation of the voyage occasioned by such removal.

(b) The cost of handling on board or discharging cargo, fuel or stores whether at a port or place of loading, call or refuge shall be admitted as general average, when the handling or discharge was necessary for the common safety or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, except in cases where the damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstances connected with such damage having taken place during the voyage.

The cost of handling on board or discharging cargo, fuel or stores shall not be admissible as general average when incurred solely for the purpose of restowage due to shifting during the voyage, unless such restowage is necessary for the common safety.

(c) Whenever the cost of handling or discharging cargo, fuel or stores is admissible as general average, the costs of storage, including insurance if reasonably incurred, reloading and stowing of such cargo, fuel or stores shall likewise be admitted as general average.

But when the ship is condemned or does not proceed on her original voyage, storage expenses shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

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RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES BEARING UP FOR AND IN A PORT OF REFUGE, ETC.

(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b)* When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

* *Paragraphs of 1974 Rule XI(b) reordered*

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RULE XI. WAGES AND MAINTENANCE OF CREW AND OTHER EXPENSES BEARING UP FOR AND IN A PORT OF REFUGE, ETC.

(a) Wages and maintenance of master, officers and crew reasonably incurred and fuel and stores consumed during the prolongation of the voyage occasioned by a ship entering a port or place of refuge or returning to her port or place of loading shall be admitted as general average when the expenses of entering such port or place are allowable in general average in accordance with Rule X(a).

(b) When a ship shall have entered or been detained in any port or place in consequence of accident, sacrifice or other extraordinary circumstances which render that necessary for the common safety, or to enable damage to the ship caused by sacrifice or accident to be repaired, if the repairs were necessary for the safe prosecution of the voyage, the wages and maintenance of the master, officers and crew reasonably incurred during the extra period of detention in such port or place until the ship shall or should have been made ready to proceed upon her voyage, shall be admitted in general average.

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Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed *and port charges incurred* during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

When the ship is condemned or does not proceed on her original voyage, *the* wages and maintenance of the master, officers and crew and fuel and stores consumed *and port charges* shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

(c) For the purposes of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.

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Provided that when damage to the ship is discovered at a port or place of loading or call without any accident or other extraordinary circumstance connected with such damage having taken place during the voyage, then the wages and maintenance of master, officers and crew and fuel and stores consumed during the extra detention for repairs to damages so discovered shall not be admissible as general average, even if the repairs are necessary for the safe prosecution of the voyage.

When the ship is condemned or does not proceed on her original voyage, wages and maintenance of the master, officers and crew and fuel and stores consumed shall be admitted as general average only up to the date of the ship's condemnation or of the abandonment of the voyage or up to the date of completion of discharge of cargo if the condemnation or abandonment takes place before that date.

Fuel and stores consumed during the extra period of detention shall be admitted as general average, except such fuel and stores as are consumed in effecting repairs not allowable in general average.

Port charges incurred during the extra period of detention shall likewise be admitted as general average except such charges as are incurred solely by reason of repairs not allowable in general average.

(c) For the purposes of this and the other Rules wages shall include all payments made to or for the benefit of the master, officers and crew, whether such payments be imposed by law upon the shipowners or be made under the terms of articles of employment.

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(d) *The cost of measures undertaken to prevent or min'mise damage to the environment shall be allow d in general average when incurred in any or all oj the following circumstances:*

(i) as part of an operation performed for the common safety which, had it been undertaken by a party outside the common maritime adventure, would have entitled such party to a salvage reward;

(ii) as a condition of entry into or departure from any port or place in the circumstances prescribed in Rule X(a);

(iii) as a condition of remaining at any port or place in the circumstances prescribed in Rule XI(b), provided that when there is an actual escape or release of pollutant substances the cost of any additional measures required on that account to prevent or minimise pollution or environmental damage shall not be allowed as general average;

(iv) necessarily in connection with the discharging, storing or reloading of cargo whenever the cost of those operations is admissible as general average.

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC

Damage to or loss of cargo, fuel or stores *sustained in consequence* of *their* handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

York-Antwerp Rules, 1974 as amended 1990

(d) *When overtime is paid to the master, officers or crew for maintenance of the ship or repairs, the cost of which is not allowable in general average, such overtime shall be allowed in general average only up to the saving in expense which would have been incurred and admitted as general average had such overtime not been incurred.*

RULE XII. DAMAGE TO CARGO IN DISCHARGING, ETC

Damage to or loss of cargo, fuel or stores *caused in the act* of handling, discharging, storing, reloading and stowing shall be made good as general average, when and only when the cost of those measures respectively is admitted as general average.

York-Antwerp Rules, 1994

RULE XIII. DEDUCTION FROM COST OF REPAIRS

Repairs to be allowed in general average shall not be subject to deductions in respect of "new for old" where old material or parts are replaced by new unless the ship is over fifteen years old in which case there shall be a deduction of one third. The deductions shall be regulated by the age of the ship from the 31st December of the year of completion of construction to the date of the general average act, except for insulation, life and similar boats, communications and navigational apparatus and equipment, machinery and boilers for which the deductions shall be regulated by the age of the particular parts to which they apply.

The deductions shall be made only from the cost of the new material or parts when finished and ready to be installed in the ship.

No deduction shall be made in respect of provisions, stores, anchors and chain cables.

Drydock and slipway dues and costs of shifting the ship shall be allowed in full.

The costs of cleaning, painting or coating of bottom shall not be allowed in general average unless the bottom has been painted or coated within the twelve months preceding the date of the general average act in which case one half of such costs shall be allowed.

RULE XIV. TEMPORARY REPAIRS

Where temporary repairs are effected to a ship at a port of loading, call or refuge, for the common safety, or of damage caused by general average sacrifice, the cost of such repairs shall be admitted as general average.

York-Antwerp Rules, 1974 as amended 1990

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York-Antwerp Rules, 1994

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

No deductions "new for old" shall be made from the cost of temporary repairs allowable as general average.

RULE XV. LOSS OF FREIGHT

Loss of freight arising from damage to or loss of cargo shall be made good as general average, either when caused by a general average act, or when the damage to or loss of cargo is so made good.

Deduction shall be made from the amount of gross freight lost, of the charges which the owner thereof would have incurred to earn such freight, but has, in consequence of the sacrifice, not incurred.

RULE XVI. AMOUNT TO BE MADE GOOD FOR CARGO LOST OR DAMAGED BY SACRIFICE

The amount to be made good as general average for damage to or loss of cargo sacrificed shall be the loss which has been sustained thereby based on the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value at the time of discharge shall include the cost of insurance and freight except insofar as such freight is at the risk of interests other than the cargo.

When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

York-Antwerp Rules, 1974 as amended 1990

Where temporary repairs of accidental damage are effected in order to enable the adventure to be completed, the cost of such repairs shall be admitted as general average without regard to the saving, if any, to other interests, but only up to the saving in expense which would have been incurred and allowed in general average if such repairs had not been effected there.

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When cargo so damaged is sold and the amount of the damage has not been otherwise agreed, the loss to be made good in general average shall be the difference between the net proceeds of sale and the net sound value as computed in the first paragraph of this Rule.

York-Antwerp Rules, 1994

RULE XVII. CONTRIBUTORY VALUES

The contribution to a general average shall be made upon the actual net values of the property at the termination of the adventure except that the value of cargo shall be the value at the time of discharge, ascertained from the commercial invoice rendered to the receiver or if there is no such invoice from the shipped value. The value of the cargo shall include the cost of insurance and freight unless and insofar as such freight is at the risk of interests other than the cargo, deducting therefrom any loss or damage suffered by the cargo prior to or at the time of discharge. The value of the ship shall be assessed without taking into account the beneficial or detrimental effect of any demise or time charterparty to which the ship may be committed.

To these values shall be added the amount made good as general average for property sacrificed, if not already included, deduction being made from the freight and passage money at risk of such charges and crew's wages as would not have been incurred in earning the freight had the ship and cargo been totally lost at the date of the general average act and have not been allowed as general average; deduction being also made from the value of the property of all extra charges incurred in respect thereof subsequently to the general average act, except such charges as are allowed in general average *or fall upon the ship by virtue of an award for special compensation under Article 14 of the International Convention on Salvage, 1989 or under any other provision similar in substance.*

In the circumstances envisaged in the third paragraph of Rule G, the cargo and other property shall contribute on the basis of its value upon delivery at original destination unless sold or otherwise disposed of short of that destination, and the ship shall contribute upon its actual net value at the time of completion of discharge of cargo.

York-Antwerp Rules, 1974 as amended 1990

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York-Antwerp Rules, 1994

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Mails, passengers' luggage, personal effects and accompanied private motor vehicles shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

(a) When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

(b) When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

York-Antwerp Rules, 1974 as amended 1990

Where cargo is sold short of destination, however, it shall contribute upon the actual net proceeds of sale, with the addition of any amount made good as general average.

Passengers' luggage *and* personal effects *not shipped under bill of lading* shall not contribute in general average.

RULE XVIII. DAMAGE TO SHIP

The amount to be allowed as general average for damage or loss to the ship, her machinery and/or gear caused by a general average act shall be as follows:

(a) When repaired or replaced,

The actual reasonable cost of repairing or replacing such damage or loss, subject to deductions in accordance with Rule XIII;

(b) When not repaired or replaced,

The reasonable depreciation arising from such damage or loss, but not exceeding the estimated cost of repairs. But where the ship is an actual total loss or when the cost of repairs of the damage would exceed the value of the ship when repaired, the amount to be allowed as general average shall be the difference between the estimated sound value of the ship after deducting therefrom the estimated cost of repairing damage which is not general average and the value of the ship in her damaged state which may be measured by the net proceeds of sale, if any.

York-Antwerp Rules, 1994

RULE XIX. UNDECLARED OR WRONGFULLY DECLARED CARGO

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. PROVISION OF FUNDS

A commission of two per cent on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average.

The capital loss sustained by the owners of goods sold for the purpose of raising funds to defray general average disbursements shall be allowed in general average.

The cost of insuring general average disbursements shall also be admitted in general average.

RULE XXI. INTEREST ON LOSSES MADE GOOD IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances *in* general average at the rate of seven per cent per annum, until *three months after* the date of *issue of* the general average *adjustment*, due allowance being made for any *payment on account by* the contributory interests or from the general average deposit fund.

York-Antwerp Rules, 1974 as amended 1990

RULE XIX. UNDECLARED OR WRONGFULLY DECLARED CARGO

Damage or loss caused to goods loaded without the knowledge of the shipowner or his agent or to goods wilfully misdescribed at time of shipment shall not be allowed as general average, but such goods shall remain liable to contribute, if saved.

Damage or loss caused to goods which have been wrongfully declared on shipment at a value which is lower than their real value shall be contributed for at the declared value, but such goods shall contribute upon their actual value.

RULE XX. PROVISION OF FUNDS

A commission of two per cent on general average disbursements, other than the wages and maintenance of master, officers and crew and fuel and stores not replaced during the voyage, shall be allowed in general average, *but when the funds are not provided by any of the contributing interests, the necessary cost of obtaining the funds required by means of a bottomry bond or otherwise, or* the loss sustained by owners of goods sold for the purpose, shall be allowed in general average.

The cost of insuring *money advanced to pay for* general average disbursements shall also be allowed in general average.

RULE XXI. INTEREST ON LOSSES MADE GOOD IN GENERAL AVERAGE

Interest shall be allowed on expenditure, sacrifices and allowances *charged to* general average at the rate of seven per cent per annum, until the date of the general average *statement*, due allowance being made for any *interim reimbursement from* the contributory interests or from the general average deposit fund.

York-Antwerp Rules, 1994

RULE XXII. TREATMENT OF CASH DEPOSITS

Where cash deposits have been collected in respect of cargo's liability for general average, salvage or special charges, such deposits shall be paid without any delay into a special account in the joint names of a representative nominated on behalf of the shipowner and a representative nominated on behalf of the depositors in a bank to be approved by both. The sum so deposited, together with accrued interest, if any, shall be held as security for payment to the parties entitled thereto of the general average, salvage or special charges payable by cargo in respect of which the deposits have been collected. Payments on account or refunds of deposits may be made if certified to in writing by the average adjuster. Such deposits and payments or refunds shall be without prejudice to the ultimate liability of the parties.

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